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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Meshell Begay Colquhoun,
Plaintiff,

v.

Paul Penzone, et al.,
Defendants.

No. CV-24-00003-PHX-JAT (MTM)

ORDER

I. Background

Rule 3.4 of the Local Rules of Civil Procedure requires an incarcerated litigant to comply with the instructions attached to the court-approved complaint form. Those instructions state: “You must immediately notify the Court . . . in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**” Instructions for a Prisoner Filing a Civil Rights Complaint in the United States District Court for the District of Arizona at 2 (emphasis in original). In addition, Local Rule of Civil Procedure 83.3(d) requires an unrepresented incarcerated party to submit a notice of change of address within seven days after a change of address.

On January 2, 2024, self-represented Plaintiff Meshell Begay Colquhoun, who was then confined in a Maricopa County Jail, filed a civil rights Complaint (Doc. 1) and an Application to Proceed In Forma Pauperis (Doc. 2). That same day, the Clerk of Court mailed Plaintiff a Notice of Assignment that, among other things, warned Plaintiff that she

1 must file a notice of change of address if her address changed and that this case would be
2 dismissed if she failed to do so.

3 On January 12, 2024, the Notice of Assignment was returned to the Court, with a
4 notation that Plaintiff was no longer in custody. Plaintiff has not filed a Notice of Change
5 of Address or otherwise notified the Court of her current address.

6 **II. Failure to Prosecute**

7 Plaintiff has the general duty to prosecute this case. *Fid. Phila. Tr. Co. v. Pioche*
8 *Mines Consol., Inc.*, 587 F.2d 27, 29 (9th Cir. 1978). In this regard, it is the duty of a self-
9 represented plaintiff to keep the Court apprised of her current address and to comply with
10 the Court's orders in a timely fashion. This Court does not have an affirmative obligation
11 to locate Plaintiff. "A party, not the district court, bears the burden of keeping the court
12 apprised of any changes in [her] mailing address." *Carey v. King*, 856 F.2d 1439, 1441
13 (9th Cir. 1988). Plaintiff's failure to keep the Court informed of her new address
14 constitutes a failure to prosecute.

15 Rule 41(b) of the Federal Rules of Civil Procedure provides that "if the plaintiff
16 fails to prosecute or to comply with these rules or a court order, a defendant may move to
17 dismiss the action or any claim against it." In *Link v. Wabash Railroad Co.*, 370 U.S. 626,
18 629-31 (1962), the Supreme Court recognized that a federal district court has the inherent
19 power to dismiss a case sua sponte for failure to prosecute, even though the language of
20 Rule 41(b) of the Federal Rules of Civil Procedure appears to require a motion from a
21 party. Moreover, in appropriate circumstances, the Court may dismiss a complaint for
22 failure to prosecute even without notice or hearing. *Id.* at 633.

23 In determining whether Plaintiff's failure to prosecute warrants dismissal of the
24 case, the Court must weigh the following five factors: "(1) the public's interest in
25 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk
26 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
27 merits; and (5) the availability of less drastic sanctions." *Carey*, 856 F.2d at 1440 (quoting
28 *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). "The first two of these factors

1 favor the imposition of sanctions in most cases, while the fourth factor cuts against a default
 2 or dismissal sanction. Thus the key factors are prejudice and availability of lesser
 3 sanctions.” *Wanderer v. Johnson*, 910 F.2d 652, 656 (9th Cir. 1990).

4 The first, second, and third factors favor dismissal of this case. Plaintiff’s failure to
 5 keep the Court informed of her address prevents the case from proceeding in the
 6 foreseeable future. The fourth factor, as always, weighs against dismissal. The fifth factor
 7 requires the Court to consider whether a less drastic alternative is available. Without
 8 Plaintiff’s current address, however, certain alternatives are bound to be futile. Here, as in
 9 *Carey*, “[a]n order to show cause why dismissal is not warranted or an order imposing
 10 sanctions would only find itself taking a round trip tour through the United States mail.”
 11 856 F.2d at 1441.

12 The Court finds that only one less drastic sanction is realistically available. Rule
 13 41(b) provides that a dismissal for failure to prosecute operates as an adjudication upon the
 14 merits “[u]nless the dismissal order states otherwise.” The Court finds a dismissal with
 15 prejudice would be unnecessarily harsh and, therefore, will dismiss the Complaint and this
 16 action without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

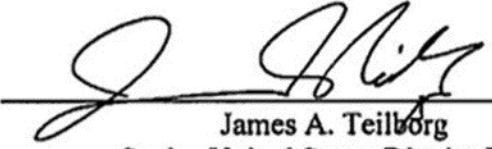
17 **IT IS ORDERED:**

18 (1) Plaintiff’s Complaint (Doc. 1) and this action are **dismissed without**
 19 **prejudice** pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to
 20 prosecute. The Clerk of Court must enter judgment accordingly.

21 (2) Plaintiff’s Application to Proceed In Forma Pauperis (Doc. 2) is **denied as**
 22 **moot**.

23 Dated this 15th day of February, 2024.

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James A. Teilborg
 Senior United States District Judge